

**26-19-5 Recovery of medical assistance from third party -- Lien -- Notice -- Action --
Compromise or waiver -- Recipient's right to action protected.**

- (1)
 - (a) When the department provides or becomes obligated to provide medical assistance to a recipient that a third party is obligated to pay for, the department may recover the medical assistance directly from that third party.
 - (b) Any claim arising under Subsection (1)(a) or Section 26-19-4.5 to recover medical assistance provided to a recipient is a lien against any proceeds payable to or on behalf of the recipient by that third party. This lien has priority over all other claims to the proceeds, except claims for attorney's fees and costs authorized under Subsection 26-19-7(2)(c)(ii).
- (2)
 - (a) The department shall mail or deliver written notice of its claim or lien to the third party at its principal place of business or last-known address.
 - (b) The notice shall include:
 - (i) the recipient's name;
 - (ii) the approximate date of illness or injury;
 - (iii) a general description of the type of illness or injury; and
 - (iv) if applicable, the general location where the injury is alleged to have occurred.
- (3) The department may commence an action on its claim or lien in its own name, but that claim or lien is not enforceable as to a third party unless:
 - (a) the third party receives written notice of the department's claim or lien before it settles with the recipient; or
 - (b) the department has evidence that the third party had knowledge that the department provided or was obligated to provide medical assistance.
- (4) The department may:
 - (a) waive a claim or lien against a third party in whole or in part; or
 - (b) compromise, settle, or release a claim or lien.
- (5) An action commenced under this section does not bar an action by a recipient or a dependent of a recipient for loss or damage not included in the department's action.
- (6) The department's claim or lien on proceeds under this section is not affected by the transfer of the proceeds to a trust, annuity, financial account, or other financial instrument.

Amended by Chapter 103, 2005 General Session